

Message Text

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TO AMEMBASSY BERN PRIORITY

INFO AMCONSUL ZURICH

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COR R E C T E D C O P Y (CLEARANCE OMMITTED)

E.O. 11652: N/A

TAGS: CFED (SEC'S GENERAL REFRACTORIES CASE), SZ, LS

SUBJECT: SEC MAILED COMPLAINTS TO RESPONDENTS OF THE GENERAL
REFRACTORIES CASE IN SWITZERLAND AND LIECHTENSTEIN

REF: BERN 2615'

1. ON JULY 17, THE SECURITIES AND EXCHANGE COMMISSION
INFORMED THE DEPARTMENT THAT THEY HAD MAILED COMPLAINTS
TO THE RESPONDENTS OF THE GENERAL REFRACTORIES CASE
IN SWITZERLAND AND LIECHTENSTEIN. THIS ACTION HAD BEEN
ORDERED LAST WEEK BY A FEDERAL JUDGE OF THE US DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA.

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2. THE SEC REGARDED THIS ACTION AS NECESSARY IN VIEW
OF THE CONTINUING SWISS REFUSAL TO ASSIST IN THE
SERVICE OF THE COMPLAINTS (REFTEL). THE US ATTORNEYS FOR
THE RESPONDENTS TOLD THE SEC THAT THEIR CLIENTS WOULD

PREFER SERVICE BY INTERNATIONAL MAIL INSTEAD OF PUBLICATION OF THE COMPLAINTS IN SOME EUROPEAN NEWSPAPER, LIKE THE "HERALD-TRIBUNE."

3. AS REPORTED IN AN EARLIER MESSAGES CONCERNING THIS CASE, THE DEPARTMENT HAD CONVEYED TO THE SEC THE

EMBASSY'S ADVICE (BERN 2428) THE SERVICE BY MAIL WOULD BE REGARDED BY THE GOVERNMENT OF SWITZERLAND AS A VIOLATION OF SWISS LAW, AN INDICATION OF "US DISREGARD AND DISTAIN FOR SWISS LAWS," AND AS A SPECIAL AFFRONT IN THIS PARTICULAR CASE WHICH HAD ALREADY BEEN DISCUSSED WITH FJDP. THE SEC CONFIRMED ON JULY 17 THAT IT WAS FULLY AWARE OF THE SWISS POSITION AND HAD WEIGHED THE POSSIBLE ADVERSE EFFECTS ON THE RATIFICATION OF JUDICIAL ASSISTANCE TREATY, BUT COULD NOT AGREE WITH THE SWISS PROHIBITIONS BECAUSE THEY WOULD, IN EFFECT, PREVENT THAT AGENCY'S BEING ABLE TO CARRY OUT ITS RESPONSIBILITIES UNDER US LAW. THE SEC DOES NOT BELIEVE THAT A POSSIBLE DEFENDANT IN A US LEGAL ACTION SHOULD BE PERMITTED TO EVADE SERVICE OF JUDICIAL DOCUMENTS THROUGH HIDING BEHIND UNIQUE SWISS LEGAL PROHIBITIONS AGAINST METHODS OF SERVICE OF WHICH THAT COUNTRY DOES NOT APPROVE.

4. SHOULD THE SWISS GOVERNMENT BECOME AWARE OF THIS SERVICE AND COMPLAIN TO THE EMBASSY, THE EMBASSY SHOULD MAKE NO COMMENT, BUT STATE THAT THE SWISS VIEWS WILL BE CONVEYED TO WASHINGTON FOR CONSIDERATION. KISSINOER

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